Kho Sin Hock v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24–4548 OF 2006
VERNON ONG JC
30 APRIL 2008

Preventive Detention — Detention order — Validity — Restricted residence — Arrest and detention of person — Delay of 17 days in making restriction orders — Whether restriction orders were made with all convenient speed — Whether terms of orders were explained to plaintiff in his own language — Restricted Residence Act 1993 ss 2A (1), 2(2) & 3(1)

Kho Sin Hock ('the plaintiff') was arrested in Kluang, Johor on 1 July 2007, and detained at the IPP, Kluang and later at the Penjara Kluang from the date of arrest to 17 July 2007. 17 days from the date of arrest, the Deputy Minister issued s 2A(1) and s 2(2) restriction orders (the restriction orders), under the Restricted Residence Act 1993 ('RRA'), against the plaintiff. After the making of the restriction orders the plaintiff was taken from Penjara Kluang and transferred to Semenyih. The effect of the restriction orders was that the plaintiff was to be restricted to Semenyih and placed under police supervision for three years, effective from 17 July 2007. The plaintiff had submitted that although s 2(2) of the RRA does not prescribe any time frame within which the Deputy Minister ought to make a restriction order the delay and lapse of 17 days from the date of arrest to the date of the making of the restriction orders was too long and as such the restriction orders were unlawful. On this ground the plaintiff sought a declaration that the restriction orders dated 17 July 2007 were null and void and of no effect. However the Deputy Minister cited five reasons to explain the delay. The plaintiff by way of his affidavit evidence challenged and rebutted all the Deputy Minister's explanations by firstly submitting that there was nothing to show that the Deputy Minister had to scrutinise new information or documents other than those he had already scrutinised before making the restriction orders. In addition, the plaintiff challenged in his affidavit that the Deputy Minister's explanation that he needed to consider whether to hold an enquiry or not was feeble because he had already decided that no further enquiry was necessary. There was no reply by the defendants to these facts raised in the plaintiff's affidavit in rebuttal. The plaintiff's second contention was that he was not informed of the terms of the restriction orders when the orders were effected on him. In this regard the plaintiff relied on s 3(1) of the RRA, a mandatory

provision which imposes a statutory obligation on the officer in charge to inform the plaintiff of the terms of the order. According to the plaintiff the terms of the orders were not explained to him in his own language, which was Hokkien. Although the plaintiff's signature and thumb print appeared on the back pages of the restriction orders, only one of the orders contained an endorsement by the officer in charge that he had explained the terms of the order to the plaintiff in his own language and in the other order the signature of the officer in charge was illegible. The two issues before the court were whether the Deputy Minister acted with all convenient speed in making the restriction orders against the plaintiff and whether there had been a serious breach of the mandatory requirement under s 3(1) of the RRA.

Held, allowing the application:

(1) The explanations proffered by the Deputy Minister were without merit and as such the legal obligations for the making of the restriction orders were not carried out by the Deputy Minister with all convenient speed. The first explanation given by the Deputy Minister that he had to wait for 17 days to make the restriction orders because he had to scrutinise further information, documents and statements before the making of the orders is devoid of merit and unsustainable in the circumstances of this case. It is abundantly clear from the Deputy Minister's affidavit that he was already satisfied that the plaintiff ought to be restricted and as such there was no additional or new documents, reports or other information for the Deputy Minister to read, study or consider. His explanation that he needed time to consider to hold an enquiry or not was also misconceived because the Deputy Minister had already decided that such an enquiry was unnecessary. The Deputy Minister's next explanation that he needed to consider the plaintiff's appeal was again misconceived in law and in fact because there was no provision for any appeal in the RRA against an order under s 2(1) of the RRA. The explanation by the Deputy Minister that he needed time to ascertain the terms and conditions of the restriction orders was also devoid of merit because there was no necessity for the Deputy Minister to ascertain the terms and conditions of the restriction orders as the same were already ascertained and comprehensively set out in the Schedule to the RRA (see paras 6–12).

(2) When the restriction orders under the RRA were served on the plaintiff, the officer in charge had the onerous responsibility of ensuring that the plaintiff had clearly understood the terms of the restriction orders. In the instant case there were certain discrepancies as to whether the terms of the restriction orders were informed and explained to the plaintiff in his own language. These were neither clarified nor explained by the

defendants. In the premises, the assertion by the officer in charge that he had interpreted the terms of the restriction orders to the plaintiff was not consistent with the affidavit evidence adduced by the defendants. From the facts of the instant case the only inference that could be drawn was either the plaintiff was not informed of the terms of the s 2(2) order or the terms of the s 2A(1) order and both inferences were favourable to the plaintiff. As such, it followed that the statutory obligation under s 3(1) of the RRA to inform the plaintiff of the terms of the restriction orders had not been complied with (see paras 22 & 25–26).

[Bahasa Malaysia summary

Kho Sin Hock ('plaintif') ditangkap di Kluang, Johor pada 1 Julai 2007, dan ditahan di IPP, Kluang dan kemudiannya di Penjara Kluang dari tarikh ditangkap sehingga 17 Julai 2007. 17 hari daripada tarikh ditangkap, Timbalan Menteri mengeluarkan perintah s 2A(1) dan s 2(2) (perintah sekatan tersebut), di bawah Akta Kediaman Terhad 1993 ('Akta'), terhadap plaintif. Selepas perintah sekatan dibuat, plaintif dikeluarkan daripada Penjara Kluang dan dipindah ke Semenyih. Kesan perintah sekatan adalah bahawa plaintif dihadkan ke Semenyih dan diletakkan di bawah pengawasan polis untuk tiga tahun, mulai dari 17 Julai 2007. Plaintif telah berhujah bahawa walaupun s 2(2) Akta tidak memperuntukkan apa-apa tempoh masa dalam masa yang untuk Timbalan Menteri membuat perintah sekatan, kelewatan dan keluputan 17 hari dari tarikh tangkapan sehingga tarikh perintah sekatan tersebut dibuat adalah terlalu lama dan oleh itu perintah sekatan tersebut menyalahi undang-undang. Atas alasan ini, plaintif memohon perisytiharan bahawa perintah sekatan bertarikh 17 Julai 2007 adalah batal dan tidak sah dan tidak berkesan. Walau bagaimanapun, Timbalan Menteri merujuk kepada lima alasan untuk menjelaskan kelewatan tersebut. Plaintif melalui keterangan afidavitnya mencabar dan mematahkan kesemua penjelasan Timbalan Menteri bermula dengan menghujahkan bahawa tidak terdapat apa-apa untuk menunjukkan bahawa Timbalan Menteri terpaksa meneliti maklumat baru atau dokumen selain daripada yang beliau telah teliti sebelum membuat perintah sekatan tersebut. Selanjutnya, plaintif di dalam afidavitnya mencabar bahawa penjelasan Timbalan Menteri yang beliau perlu untuk menimbang sama ada untuk membuat siasatan atau tidak adalah lemah kerana beliau telah memutuskan bahawa siasatan selanjutnya tidak perlu. Tidak terdapat jawapan dari defendan-defendan terhadap fakta ini yang dibangkitkan di dalam afidavit plaintif dalam pematahan. Hujahan kedua plaintif adalah bahawa dia tidak diberitahu mengenai terma-terma perintah sekatan tersebut apabila perintah tersebut dikenakan ke atas dia. Berkaitan isu ini, plaintif bergantung ke atas s 3(1) Akta tersebut, peruntukan mandatori yang mengenakan tanggungjawab statutori ke atas pegawai bertugas untuk memberitahu plaintif mengenai

terma-terma perintah tersebut. Mengikut plaintif, terma-terma tidak dijelaskan kepada dia di dalam bahasanya sendiri, iaitu Hokkien. Walaupun tandatangan plaintif dan cap jari terdapat di atas muka surat belakang perintah sekatan tersebut, hanya satu perintah yang mempunyai endorsan oleh pegawai bertugas bahawa dia telah menjelaskan terma-terma perintah tersebut kepada plaintif di dalam bahasanya sendiri dan di dalam perintah lagi satu tandatangan pegawai bertugas tidak dapat dibaca. Dua isu di hadapan mahkamah adalah sama ada Timbalan Menteri bertindak dengan segera di dalam membuat perintah sekatan terhadap plaintif dan sama ada terdapat kemungkiran serius terhadap keperluan mandatori di bawah s 3(1) Akta tersebut.

Diputuskan, membenarkan permohonan:

(1) Penjelasan yang diberikan oleh Timbalan Menteri adalah tanpa merit dan oleh itu tanggungjawab undang-undang untuk membuat perintah sekatan tersebut tidak dilakukan oleh Timbalan Menteri dengan segera. Penjelasan pertama yang diberikan oleh Timbalan Menteri yang beliau terpaksa menunggu selama 17 hari untuk membuat perintah sekatan tersebut kerana beliau terpaksa meneliti maklumat, dokumen dan pernyataan selanjutnya sebelum membuat perintah tidak mempunyai merit dan tidak boleh dikekalkan di dalam keadaan kes ini. Ia adalah jelas daripada afidavit Timbalan Menteri bahawa beliau telah puas hati bahawa plaintif patut dihadkan dan oleh itu tidak terdapat dokumen, laporan atau maklumat lain tambahan atau baru untuk Timbalan Menteri membaca, menyemak dan mempertimbangkan. Penjelasan beliau bahawa beliau memerlukan masa untuk mempertimbangkan untuk membuat siasatan atau tidak juga adalah salah tanggap kerana Timbalan Menteri tersebut telah memutuskan bahawa siasatan sebegitu tidak perlu. Penjelasan kemudiannya oleh Timbalan Menteri bahawa beliau perlu untuk mempertimbangkan rayuan plaintif sekali lagi adalah salah tanggap di dalam undang-undang dan fakta kerana tiada peruntukan untuk rayuan di dalam Akta terhadap perintah di bawah s 2(1) Akta. Penjelasan Timbalan Menteri bahawa beliau perlu untuk menentukan terma-terma dan syarat-syarat perintah sekatan tersebut juga tidak mengandungi merit kerana tidak perlu untuk Timbalan Menteri menentukan terma-terma dan syarat-syarat perintah sekatan kerana ianya telah ditentukan dan secara terperinci dinyatakan di dalam Jadual kepada Akta (lihat perenggan 6–12).

(2) Apabila perintah sekatan di bawah Akta diserahkan ke atas plaintif, pegawai bertugas mempunyai tanggungjawab berat untuk memastikan bahawa plaintif, jelas memahami terma-terma perintah sekatan tersebut. Dalam kes ini, terdapat percanggahan tertentu terhadap sama

ada perintah sekatan telah diberitahu dan dijelaskan kepada plaintif dalam bahasanya sendiri. Percanggahan ini tidak dijelaskan atau diterangkan oleh defendan-defendan. Dalam keadaan itu, penegasan oleh pegawai bertugas bahawa dia telah menterjemahkan terma-terma perintah sekatan tersebut kepada plaintif adalah tidak konsisten dengan keterangan afidavit yang dikemukakan oleh defendan-defendan. Daripada fakta, satu-satunya inferens yang dapat dibuat adalah sama ada plaintif tidak diberitahu mengenai terma-terma perintah s 2(2) atau terma-terma perintah s 2A(1) dan kedua-dua inferens adalah memihak kepada plaintif. Oleh itu, adalah jelas bahawa tanggungjawab statutori di bawah s 3(1) Akta untuk memberitahu plaintif mengenai terma-terma perintah sekatan tidak dipatuhi (lihat perenggan 22 & 25–26).]

Notes

For cases on validity of detention order, 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1455–1476.

Cases referred to

Chin Wee Yee v Menteri Dalam Negeri, Kuala Lumpur & Satu Lagi [1998] 2 MLJ 569 (refd)

Chong Kim Loy v Timbalan Menteri Dalam Negeri Malaysia & Anor [1989] 3 MLJ 121 (refd)

Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals [2007] 5 MLJ 611 (distd)

Kok Wee Siong v Timbalan Menteri Dalam Negeri Malaysia & Anor [1992] 1 CLJ 681 (refd)

Lai Poh Kim [1992] Mallal's Digest Para 26 (refd)

Lee Teng Kui v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1994] MLJU 545 (folld)

Ng Chai Yang v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1994] 2 MLJ 336 (refd)

Tan Hoon Seng v Minister of Home Affairs & Anor and another appeal [1990] 1 MLJ 171 (folld)

Thor Kheng Chye v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & 3 Ors [1994] 1 AMR 768 (refd)

Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia v Liau Nyun Fui [1991] 1 MLJ 350 (refd)

Zakaria bin Hussin v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & 3 Ors [1994] 1 AMR 730 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(1), 6(1)
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 3(3)

Restricted Residence Act 1933 ss 2(1), 2(2), 2A(1), 3, 3(1)

Shanmugam (Shanmugam & Co) for the plaintiff.
Syed Faisal (Legal Adviser's Office, Home Ministry) for the defendant.

Vernon Ong JC:

[1] This saman pemula (encl 3) is by the plaintiff for a declaration that restriction order dated 17 July 2006 under ss 2A(1) and 2(2) of the Restricted Residence Act 1933 ('the RRA') is null and void and of no effect.

BRIEF FACTS

1 July 2006	The plaintiff arrested in Kluang, Johor and detained at IPP, Kluang and later at Penjara Kluang. Warrant of arrest and detention order — issued on 30 March 2006 (s 2(1)).
17 July 2006	Section 2(2) order and s 2A(1) order issued. The plaintiff taken from Penjara Kluang and transferred to Semenyih. Restriction order — restricting the plaintiff to mukim Semenyih Daerah Hulu Langat, Selangor for three years with effective from 17 July 2006 together with police supervision.

TWO ISSUES RAISED BY THE PLAINTIFF

[2] Whether the plaintiff's prolonged detention at Penjara Kluang before the making of the restriction order is unlawful, null and void due to the delay and lapse of 17 days from the date of the arrest to the date of the restriction order.

[3] Whether the contents and terms of the restriction order were informed and explained to the plaintiff in his own language, namely, Hokkien.

AFFIDAVITS FILED

(1) The plaintiff's affidavit affirmed on 1 December 2006 (encl 4);

(2) Deputy Minister's affidavit affirmed on 12 March 2007 (encl 14);

(3) Affidavit Cif Insp Nordin bin Ahmad — 11 April 2007 (encl 7);

(4) Affidavit Jamaludin bin Saad — 11 April 2007 (encl 9);

(5) Affidavit Kons Zamzuriana bt Zakaria — 11 April 2007 (encl 8);

(6) Affidavit D/L/Kpl Wong Boon Wai — 12 March 2007 (encl 15);

(7) The plaintiff's affidavit balasan — 18 May 2007 (encl 10);

A (8) Affidavit balasan Jamaludin — 19 October 2007 (encl 13);

(9) Affidavit balasan Deputy Minister — 10 October 2007 (encl 12).

ISSUE NO 1

B

[4] Learned counsel for the plaintiff submitted that s 2(2) of the RRA does not prescribe any time frame within which the Deputy Minister may make a restriction order. Sections 2(1), 2(2) and 2A(1) read as follows:

C

2(1) Whenever it shall appear to the Minister on such written information and after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular area or should be prohibited from entering into any particular area or areas the Minister may issue an order in one of the Forms in the Schedule for the arrest and detention or, if he is already in prison, for the detention of that person.

D

2(2) The Minister thereafter after such further enquiry as he may deem necessary may make an order in the Form in the Schedule that from a date to be stated in the order, the person do reside in such area as may be specified in the order or do not enter into such area or areas as may be so specified.

E

2A(1) Without prejudice to section 2, the Minister may by order direct that any person named in the order shall be placed under police supervision for any period not exceeding five years and may renew any such order for a further period or periods not exceeding one year at any one time.

F

G **[5]** Learned counsel for the applicant submitted under s 2(2), a restriction order may be made under two situations, namely (i) after a further enquiry, if further enquiry is deemed necessary, and (ii) after no enquiry is deemed necessary. In respect of the first situation, the further enquiry and the issue of the restriction order shall be effected with all convenient speed. In respect of

H the second situation, the Deputy Minister ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed. What constitutes convenient speed depends on the particular circumstances of each case (see *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia v Liau Nyun Fui* [1991] 1 MLJ 350).

I

[6] In his affidavit (encl 14 at para 5(ii)) the Deputy Minister stated that no further enquiry was necessary. In the circumstances the restriction order shall be made with all convenient speed after the detention of the applicant. In this case, however, there was a delay and lapse of 17 days from the date of

arrest (1 July 2006) to the date of the making of the restriction order date (17 July 2006). The Deputy Minister also cited five grounds to explain the reasons for the delay (encl 14 at para 7). The five grounds read as follows:

(a) Saya harus melihat, meneliti dan menilai dokumen-dokumen dan fail kes plaintif yang relevan di dalam perkara ini dan juga maklumat terkini mengenai fail siasatan plaintif;

(b) Saya harus memutuskan sama ada untuk mengadakan inkuiri atau sebaliknya;

(c) Saya harus menimbangkan rayuan jika ada yang akan dikemukakan oleh plaintif;

(d) Saya harus menentukan terma-terma dan syarat-syarat di dalam eksh 'MJB-2' sebagaimana yang dilampir dan ditandakan dalam afidavit saya ini; dan

(e) Di dalam menentukan terma-terma dan syarat-syarat, saya juga harus meneliti kesesuaian tempat sekatan dan kesesuaian pemohon bekerja.

Explanation (a)

[7] Learned counsel submitted that there is no evidence to show that any further documents or information were received or scrutinised by the Deputy Minister before making the s 2(2) order. There is also no evidence to show that the Deputy Minister caused any further statements and documents to be recorded and processed other that those he had already scrutinised before making the s 2(1) arrest order. This contention is consistent with the Deputy Minister's assertion that he decided not to have any enquiry (see encl 14 at para 5 (iii)). This fact is also evident in the grounds of arrest contained in the 'Borang A — s 2(1) — Alasan-Alasan Menangkap' (exh MJB-1, reproduced hereunder) wherein the Deputy Minister said that he was satisfied as to the grounds for making the restriction order under s 2(2).

Alasan-Alasan Menangkap Kho Sin Hock No K/P: 570726–01–6541

Atas maklumat, laporan dan keterangan bertulis yang diperolehi dalam sesuatu siasatan yang dijalankan oleh pegawai-pegawai yang bertanggungjawab dan berpengalaman dalam membuat penyiasatan dan siasatan mengenai perkara-perkara jenis ini, saya berpuashati bahawa terdapat sebab-sebab bagi mempercayai, dan saya sesungguhnya percaya bahawa kegiatan-kegiatan kamu di kawasan Food Court Ah Cheng, Jalan Tembikai, Kluang Johor tidak mendatangkan faedah kepada keamanan dan ketenteraman awam di situ....

[8] It is abundantly clear from the Deputy Minister's affidavit that he was already satisfied that the plaintiff ought to be restricted for the purpose of

peace and public order. There were no additional or new documents, reports or other information for the Deputy Minister to read study or consider. In *Liau Nyun Fui* at p 353, Abdul Hamid Omar LP said:

> The Timbalan Menteri had made a firm decision that it was not necessary to hold any further enquiry under s 2(ii) of the Enactment. All he did was to scrutinise the information and documents, presumably in respect of those he already had in his possession at the time he issued the order for the plaintiff's arrest and detention. There was thus nothing to show that the Timbalan Menteri had to scrutinise new information or documents other than those he had already scrutinised before making the order under s 2(ii). There was also nothing to show that he caused further statements to be recorded or further documents to be taken possession of after the order under s 2(i). Why therefore did he have to wait six weeks to make the restriction order?

[9] In the circumstances of this case there was clearly no reason why the Deputy Minister had to wait for 17 days to make the restriction order. Accordingly I find that explanation (a) is devoid of merit and is unsustainable.

EXPLANATION (b)

[10] Learned counsel submitted that since the Deputy Minister had already decided that no further enquiry was necessary (Deputy Minister's affidavit encl 14 at para 5 (iii)), the Deputy Minister ought to have proceeded to make the restriction order with all convenient speed. In the premises the explanation that the Deputy Minister still needed to consider whether to hold an enquiry or not is feeble and misconceived. As there was no reason for the Deputy Minister to wait for 17 days before making the restriction order and in the light of the Deputy Minister's assertions relating to explanation (a) above, I find that this explanation is without merit.

EXPLANATION (c)

[11] The Deputy Minister's third explanation alluded to the fact that he needed to consider the plaintiff's appeal, if any. Learned counsel submitted that there is no evidence before the court to show that the plaintiff made any appeal against his arrest order under s 2(1). It is clear from the affidavit evidence that no appeal was in fact made by the plaintiff. In the absence of any appeal, this explanation is of no merit whatsoever. In this respect, it is noted that there is no provision for any appeal against an order under s 2(1) under the RRA. In the circumstances, the Deputy Minister's explanation that he needed to consider the plaintiff's appeal, if any, is misconceived in law and

in fact. Further, having already decided not to hold any enquiry, this explanation is irrelevant and devoid of merit.

EXPLANATIONS (d) AND (e)

[12] Learned counsel argued that there was no necessity for the Deputy Minister to ascertain the terms and conditions of orders made under s 2(2) and s 2A. Section 2A(2) describes five restrictions set out in paras (a) to (f) therein under which a person shall be subject to. A perusal of s 2(2) and s 2A(1) orders in question will reveal that the terms and conditions are clearly spelt out. In fact these orders adopted the standard forms as provided for in the Schedule to the RRA. In the case of s 2(1) order the form in question is identified as 'Borang C' and s 2A(1) order 'Borang E' in the Schedule. There is thus no necessity for the Deputy Minister to ascertain the terms and conditions of the said orders as the same are already ascertained and comprehensively set out in the Schedule. In the premises explanations (d) and (e) are also without merit.

[13] In *Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals* [2007] 5 MLJ 611 the Court of Appeal dismissed the appeals of the appellants against the decision of the High Court for a declaration that the restriction order issued against them under s 2(2) of the RRA was null and void and of no effect. In ruling on the appropriate approach to be adopted the Court of Appeal said:

> It is clear based on the principles enunciated in the above mentioned two cases *(Phua Hing Lai & Ors v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1990] 1 CLJ 420 and *Lai Nyun Fui*, the applicable approach to be adopted is firstly, the appropriate test is not on the delay in carrying out the legal obligation but rather on whether the legal obligation was carried out with all convenient speed under the circumstances of the case. And, secondly, the burden of establishing the performance of the legal obligation under such circumstances remained on the applicant, the restricted person and never shifted to the respondent, the Minister.
>
> We are of the view that in order to arrive at a correct finding of fact as to whether the legal obligation was carried out with all convenient speed under the circumstances of such particular case, it shall be the duty of the trial judge to look into all the affidavit evidence adduced by the parties in the proceedings.

[14] The delay of 17 days is evident from the affidavit evidence adduced by the parties herein. There is nothing in the Deputy Minister's affidavit or in the other affidavits filed by the defendants to say otherwise. Instead, the Deputy Minister sought to explain the reasons for the delay. This has been considered in the preceding paragraphs. In *Keng Kien Hock* the appellant chose not to challenge or to rebut the Deputy Minister's explanations. The

Court of Appeal held that such an omission by the appellant rendered the explanations given by the Deputy Minister as being plausible.

[15] In this instance, however, the plaintiff has (affidavit vide encl 10 at para 4) challenged and rebutted all the Deputy Minister's explanations. There was no reply to the plaintiff's affidavit in rebuttal. Learned counsel for the plaintiff referred to the following cases in which the delays were held to be unreasonable.

Liau Nyun Fui	42 days delay
Zakaria bin Hussin [1994] 1 AMR 730	25 days delay
Thor Kheng Chye [1994] 1 AMR 768	14 days delay
Ng Chai Yang [1994] 2 MLJ 336	19 days delay
Lai Poh Kim [1992] Mallal's Digest Para 26	27 days delay
SP No 24–3142 of 2004	32 days delay

[16] After considering the submissions of learned counsel for the plaintiff and the respondents and examining the five explanations proffered by the Deputy Minister it is this court's finding that the explanations are without merit. Accordingly, the legal obligations for the making of the orders under s 2(2) and s 2A(1) were not carried out by the Deputy Minister with all convenient speed.

ISSUE NO 2

[17] I now turn to the plaintiff's second contention. It is that the plaintiff was not informed of the terms of order when service of the orders under s 2(2) and s 2A(1) was effected on him. Section 3 of the RRA which provides that a person affected shall be informed of the order reads as follows:

> (1) When any such order as is referred to in subsection 2(2) or section 2A has been made with reference to any person, he shall be taken before the Officer in Charge of the prison in which he is detained and the Officer in Charge *shall inform him of the terms of the order* and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside. (Emphasis added.)

[18] Section 3(1) is a mandatory provision and it imposes a statutory obligation on the officer in charge to inform the plaintiff of the terms of the order. In *Kok Wee Siong v Timbalan Menteri Dalam Negeri Malaysia & Anor* [1992] 1 CLJ 681 the petitioner was arrested under s 3(1) of the Dangerous

Drugs (Special Preventive Measures) Act 1985. It was, inter alia, contended by the petitioner that the detention order must be explained to the petitioner. In that case the High Court adopted the guidelines as laid down by the Supreme Court in *Tan Hoon Seng v Minister for Home Affairs & Anor and another appeal* [1990] 1 MLJ 171 where it stated that the law of preventive detention must be construed strictly and in the case of doubt the court should lean in favour of the subject. The High Court held that all the relevant documents served on the petitioner must be understood by him in his own language and the person engaged in the explanation must state that he too understood the said language and was proficient in it.

[19] In *Lee Teng Kui v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1994] MLJU 545, at p 913 the applicant was detained under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. The issue was whether the officer in charge had, when reminding the detainee of his right to make representations, used a language or dialect which was understood by the detainee and whether r 3(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 had been breached. The High Court held that when the detainee is being informed of, or reminded by, the officer in charge of his right to make representations, the officer in charge has an onerous responsibility in ensuring that the detainee clearly understood such rights, notwithstanding whether such information or reminder was made during arrest, service of the detention order or when a detainee is brought to the place of detention.

[20] Learned counsel for the plaintiff submitted that the plaintiff only understood Hokkien. In his affidavit the plaintiff said that 'Saya berfasih bahasa Cina Hokkien'. He also said that 'Isi kandungan perintah-perintah selanjutnya tidak diterangkan kepada saya' (encl 4 at paras 2 and 4 respectively).

[21] In reply, learned counsel for the defendants submitted that the plaintiff was informed of the said orders in Mandarin by one D/L/Kpl Wong Boon Wai. In this connection, the relevant averments contained in para 10 of D/L/Kpl Wong Boon Wai's affidavit (encl 15) is as follows:

> Pada 17 July 2006 saya telah pergi ke Penjara Kluang, Johor untuk membantu Penguasa Penjara JAMALUDIN BIN SAAD di Penjara Kluang, Johor untuk menterjemahkan penerangan yang dibuat oleh Penguasa Penjara JAMALUDIN BIN SAAD dari Bahasa Malaysia ke dalam Bahasa Cina loghat Mandarin kepada plaintif. Sebelum menterjemahkan penerangan yang dibuat oleh Penguasa Penjara JAMALUDIN BIN SAAD saya telah terlebih dahulu bertanya kepada Pemohon bahasa yang fasih digunakan olehnya dan plaintif menyatakan yang dia fasih dalam Bahasa Cina loghat Mandarin, saya kemudiannya menterjemahkan kepada plaintif penerangan yang dibuat oleh Penguasa Penjara JAMALUDIN BIN SAAD dalam

A Bahasa Cina loghat Mandarin. Plaintif telah memahami segala terjemahan yang saya buat berkaitan dengan syarat-syarat sebagaimana Borang E berkaitan perintah di bawah s 2A(1) Akta Kediaman Terhad 1933 (selepas ini dirujuk sebagai 'Akta tersebut') dan perintah di bawah s 2(2) Akta tersebut. Plaintif kemudiannya telah mengakui memahami isi kandungan dokumen-dokumen tersebut dan telah menandatangani di muka surat belakang kedua-dua perintah tersebut.

B

[22] Applying the principles referred to in *Lee Teng Kui* and *Tan Hoon Seng* the court must be satisfied that when the two orders in question were served on the plaintiff: (i) the plaintiff was informed of the terms of the said orders C in his own language, (ii) that the plaintiff understood what was explained to him, and (iii) the person engaged in the explanation must state that he too understood the said language and was proficient in it. In this regard, the officer in charge has an onerous responsibility in ensuring that the plaintiff clearly understood the terms of the said orders.

D

[23] Learned counsel for the defendants submitted that the plaintiff admitted that he understood the terms of the said orders when the plaintiff signed and affixed his thumbprint on the back pages of the said orders (see *Chin Wee Yee v Menteri Dalam Negeri, Kuala Lumpur, Ministry of Home Affairs* E *& Anor* [1998] 2 MLJ 569. It was also submitted that it was not necessary to explain using technical or precise language. It was sufficient to inform the plaintiff in general terms. In support thereof learned counsel referred to *Chong Kim Loy v Timbalan Menteri Dalam Negeri, Malaysia & Anor* [1989] 3 MLJ 121 which concerned a detention order made under s 6(1) of the F Dangerous Drugs (Special Preventive Measures) Act 1985.

[24] The plaintiff's signature and thumb-print appears on of the back pages of both s 2(2) order and s 2A(1) order. However, on examination, it was found that only one of the back pages contained an endorsement by D/L/Kpl G Wong Boon Wai on the following terms:

> Saya telah menerangkan isi-isi kandungan dokumen yang diterima oleh penama di dalam bahasa Cina/Mandarin (loghat) yang difahami oleh penama.
>
> (signature — illegible)
>
> H .....
>
> (D/L/KPL 118466 Wong Boon Wai)
>
> PENTERJEMAH

I

[25] Exhibit MJB-2 in the Deputy Minister's affidavit (encl 14) includes copies of the front pages of s 2(2) and s 2A(1) orders followed by copies of two back pages. The first copy of a back page carried the endorsement of D/L/Kpl Wong Boon Wai abovementioned. However, the second copy of a

back page did not carry the said endorsement. There was also nothing to indicate which order the back pages related to respectively. These were not clarified or explained by the defendants.

[26] In the premises, D/L/Kpl Wong Boon Wai's assertion that he interpreted the terms of both orders to the plaintiff is not consistent with the affidavit evidence adduced by the defendants. The only inference that can be drawn is that: (i) the plaintiff was not informed the terms of s 2(2) order, or (ii) the plaintiff was not informed the terms of the s 2A(1) order. Both inferences are favourable to the plaintiff. In the circumstances, it cannot be said that the plaintiff has been informed of the terms of the two orders. In view of this finding, it follows that the statutory obligation to inform under s 3(1) has not been complied with.

[27] To conclude, it is the finding of this court that the Deputy Minister failed to act with all convenient speed in making the s 2(2) and s 2A(1) orders. It is also the finding of this court that there has been a serious breach of the mandatory requirement of s 3(1). The effects of both of the above findings render the said restriction orders null and void. The plaintiff is hereby set at liberty.

Application allowed.

Reported by K Nesan